

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

(E-Filed: April 28, 2009)

CHERYL EICHELKRAUT,

Petitioner,

v.

**SECRETARY OF THE DEPARTMENT OF
HEALTH AND HUMAN SERVICES,**

Respondent.

UNPUBLISHED

No. 99-0617V

**Stipulation; Attorneys'
Fees & Costs**

Anne C. Toale, Sarasota, FL, for petitioner.

Althea Davis, Washington, DC, for respondent.

DECISION ON ATTORNEYS' FEES AND COSTS

On April 24, 2009, petitioner, Cheryl Eichelkraut, filed a petition seeking compensation under the National Vaccine Injury Compensation Program (the "Vaccine Program" or the "Act").¹

On August 30, 2007, petitioner's former counsel, Ronald Homer, filed a motion to withdraw as attorney of record. The undersigned granted that motion on September 6, 2007. On October 16, 2007, Anne C. Toale filed a notice of appearance as petitioner's new counsel of record.

In anticipation of the scheduled entitlement hearing, petitioner had collected a

¹ The National Vaccine Injury Compensation Program is set forth in Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755, codified as amended, 42 U.S.C.A. § 300aa-10-§ 300aa-34 (West 1991 & Supp. 2002) (Vaccine Act or the Act). All citations in this decision to individual sections of the Vaccine Act are to 42 U.S.C.A. § 300aa.

substantial number of medical records, and the parties had retained experts. The experts had prepared reports setting forth their opinions.

On January 5, 2009, the parties contacted the undersigned's chambers by telephone to request an extension of time to file supplemental expert reports in order to explore the possibility of settlement. On January 8, 2009, the parties indicated that they had reached a tentative agreement. On April 2, 2009, counsel for respondent filed a status report indicating that the stipulation memorializing the settlement was forward to petitioner by overnight mail.

On April 24, 2009, counsel for petitioner filed a stipulation of fact for attorneys' fees and costs to which respondent does not object.

The Vaccine Act permits an award of reasonable attorneys' fees and costs. 42 U.S.C. § 300 aa-15(e). Because the undersigned finds petitioner's stipulation to be reasonable, the undersigned awards a total of \$60,865.11 in attorneys' fees and costs in this matter as requested for reimbursement in the following amounts:

- a. An award of \$28,012.52 in attorneys' fees and costs payable to the firm of Maglio, Christopher & Toale:
- b. An award of \$32,732.59 in attorneys' fees and costs payable to the firm of Conway, Homer & Chin-Caplan; and
- c. An award of \$120.00 in out-of-pocket expenses payable to petitioner pursuant to General Order #9.

The clerk of court **SHALL ENTER JUDGMENT** in favor of petitioner for \$60,865.11. The award shall be made in the form of three checks. The first check shall be made payable jointly to petitioner and the firm of Maglio, Christopher & Toale in the amount of \$28,012.52. The second check should be made payable jointly to petitioner and the firm of Conway, Homer & Chin-Caplan in the amount of \$32,732.59. The third check shall be made payable to petitioner in the amount of \$120.00.

In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court is directed to entered judgment herewith.

IT IS SO ORDERED.

s/Patricia E. Campbell-Smith
Patricia E. Campbell-Smith
Special Master